

Document 66 Attachment B

From: [Patricia Butler](#)
To: [Waage, Melissa](#)
Subject: 073114 Clean Water Protection Rule Media Report - 28 items including new rule to clarify the "clarifying" rule, water rule based on science...
Date: Thursday, July 31, 2014 10:11:53 AM
Attachments: [image001.png](#)
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July 31, 2014

News Coverage

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EPA Planning Rule to Clarify “Assumable” Waters for State 404 Programs, Inside EPA, (see below), 07/30/14. EPA is planning to craft a rule to clarify what types of waters are "assumable" under the Clean Water Act (CWA) in response to calls from states that clarity is needed for states to win authority to issue section 404 dredge-and-fill permits and to protect existing programs, particularly given confusion created by the agency's pending CWA jurisdiction rule. State sources say the issue has been muddled by EPA and the Army Corps of Engineers' proposed rule aimed at clarifying the scope of the CWA, which the agencies are taking comment on through Oct. 20 and some sources say has made it difficult to clearly identify which waters are subject to state authority once states assume permit powers under section 404(g).

Stalled Nominee Slated for Key EPA Water Role, Inside EPA, (see below), 07/30/14. While McCarthy does not explicitly state that Kopocis will be leading the water office, during a July 8 press call discussing the CWA jurisdiction rule she referred to Kopocis as head of the Office of Water. In the email, McCarthy touts Stoner's work as having "greatly expanded" EPA's focus on climate resiliency, green infrastructure and information tools and technology, and highlights the CWA jurisdiction proposed rule, issued April 21, and the agency's final cooling water intake rule, released in May but which has yet to be published in the *Federal Register*.

EPA to Republicans: You're making it 'very difficult' to do our job, The Hill, 07/30/14. Perciasepe plans to leave the EPA next month, but before he takes off he has been making the rounds in Congress, offering to patch things up with Republicans who are wary of the agency. But this comes as little comfort to many Republicans, who are skeptical of the EPA's new Waters of the U.S. rule, fearing it could lead to a massive power grab over farmland. Perciasepe has told lawmakers before that the rule would actually “reduce” the scope of waterways the agency regulates, but based on their own reading of the rule, Republicans believe it would do the exact opposite. They say the rule would give the EPA permission to regulate small ditches in backyards, streams, and creeks.

Tipton, EPA fight over water rule, The Durango (CO) Herald, 07/30/14. U.S. Rep. Scott Tipton on Wednesday was in a fighting mood when he joined House Republicans in grilling the Environmental Protection Agency's deputy chief about a proposed rule that many farmers fear would allow the EPA to regulate small bodies of water, even ponds or puddles on their land. Deputy Administrator Bob Perciasepe said the proposal simply clarifies regulatory authority under the Clean Water Act to protect streams and wetlands. That authority has been murky thanks to confusing and complex guidelines following Supreme Court decisions in 2001 and 2006.

AG Strange: EPA is 'out of control,' The Troy (AL) Messenger, 07/30/14. Strange said he and a group of 25 conservative attorney generals in the country would continue to challenge those who did not support the country's rule of law, namely President Barack Obama and the Environmental Protection Agency. "The EPA is an example of an agency that is out of control," he said. He is one of nine attorney generals who have a lawsuit against the Obama administration's proposed carbon rule and has said the EPA is unlawfully seeking to extend the scope of the Clean Water Act. If things did not change by next year, he and his group would sue the agency, Strange told members of PCRW.

Farmers Voice Concern Over Proposed Water Rules, KTVE-TV/West Monroe, LA., "Any body of water that has a significant connection, or they call it a nexus, to a body of water of the us becomes a body of water of the US." explained Commissioner Mike Strain with the Louisiana Department of Agriculture & Forestry. Strain will have a working relationship with the EPA during this process. "We're here to listen to the farmers," stated Strain. "And I'm here to hear their concerns because i become the voice of their concerns as we address the issues with the federal government."

Opinion

EPA water rule based on sound science, The (Cedar Rapids, IA) Gazette, (op-ed), 07/31/14. Wallace Taylor: A July 21 Gazette article discussing the Environmental Protection Agency's proposed rule to clarify waters covered by the protection of the Clean Water Act included statements by the Farm Bureau and Senator Charles Grassley incorrectly describing what the rule would do. In order to establish a scientific basis for determining a "significant nexus" the EPA appointed an advisory committee of eminent scientists to address this question. This committee included two professors from Iowa State University. Their 300 page report is the basis for the proposed rule. The report concluded that wetlands and other small water bodies can be connected to larger water bodies physically, chemically, and biologically in many ways. In other words, there are many ways pollution can be transferred from small water bodies to larger water bodies. In order to carry out the goal of the Clean Water Act, pollution in the small water bodies must be reduced so it will not contaminate the larger water bodies. Wallace Taylor is an environmental attorney in Cedar Rapids.

Local businesses want clean water, The Hartford (CT) Courant, (letter to the editor), 07/30/14. Sarah Cinquemani: The American Sustainable Business Council just released its findings from a study conducted with 555 small businesses across the United States. The study focuses on water quality regulations and whether small businesses support or oppose new regulations. By a 2-1 margin, small business owners responded that government should taking stronger action in regulating our waterways. Looking deeper, small business owners agreed that improving water quality will help maintain a healthy economy and increase local jobs. Sarah Cinquemani is with Clean Water Action in Manchester.

Blogs/Social Media



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Brad Wenstrup [@RepBradWenstrup](#) Jul 29

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SUBMIT COMMENTS NOW - Tell EPA to Ditch the Rule at [NCBA.org](https://www.ncba.org) Stop EPA from Expanding **Clean Water Act** Authority.



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The EPA announced an extension to the comment period for changes to "Waters of the US".
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Inside EPA - 08/01/2014

EPA Planning Rule To Clarify 'Assumable' Waters For State 404

Programs

Posted: July 30, 2014

EPA is planning to craft a rule to clarify what types of waters are "assumable" under the Clean Water Act (CWA) in response to calls from states that clarity is needed for states to win authority to issue section 404 dredge-and-fill permits and to protect existing programs, particularly given confusion created by the agency's pending CWA jurisdiction rule.

Speaking to the Environmental Council of the States (ECOS) and other state groups earlier this month during a quarterly Office of Water briefing, EPA "reiterated its commitment to working with states, per ECOS' request, on new regulations for state assumption of the dredge and fill program under CWA 404(g)," according to ECOS' July 25 weekly *Ecoswire* newsletter.

Groups representing state environment officials have long urged states to assume 404 authority, which for years only Michigan and New Jersey have done, but recently they have also called on EPA to revise the relevant CWA regulations to provide greater clarity as to what types of waters states may assume the 404 permitting role over.

Acting EPA water chief Nancy Stoner told the state groups in June that she was instructing her staff to find a way to provide clarity on assumable waters.

State sources say the issue has been muddled by EPA and the Army Corps of Engineers' proposed rule aimed at clarifying the scope of the CWA, which the agencies are taking comment on through Oct. 20 and some sources say has made it difficult to clearly identify which waters are subject to state authority once states assume permit powers under section 404(g).

While Congress intended to preclude waters that transport interstate or foreign commerce from states' 404 oversight, the proposed rule is creating confusion over which "other waters" -- such as prairie potholes or playa lakes -- are subject to state oversight. The reason, officials say, is that because EPA and the Corps have based their proposed rule on the nexus or connectivity between smaller waters and larger "navigable" waters, it allows federal officials to argue that many waters currently eligible for state oversight are off limits.

Complicating the issue further is that a handful of states, such as Alaska and Oregon, are in the process of seeking CWA 404 authority, and say the application review with the Corps often gets weighed down in a lengthy discussion of what waters the program will address.

"We're getting lost in the discussion on connectivity," a state source previously told *Inside EPA*, adding, "it's a dead end street for a state if the Corps pulls out section 10 [of the Rivers & Harbors Act] and starts waving it" to justify preempting state authority.

And state sources say any effort EPA and the Corps make to clarify 404(g) must be kept separate from the CWA jurisdiction rulemaking to avoid further confusion, a request EPA has appeared to agree with in recent discussions.

"They don't want to get it mixed up in the waters of the U.S. Rule," a second state source says, adding that they are "surprised EPA reacted so quickly" on states' calls to address the assumable waters issue, given that finalizing the CWA jurisdiction rule is likely to be a time consuming and resource intensive process.

A third source says that while EPA has multiple options besides a formal rulemaking for clarifying the 404(g) questions, such as guidance, rule revisions or a policy letter, "it needs to be clarified irrespective of the CWA rule." The source adds that "there is no reason to have it in the new definition of waters of the U.S." but says they have not yet formed a position on whether it should be included in preamble language in the final jurisdiction rule.

The CWA jurisdiction proposal, issued April 21 jointly by EPA and the Corps, aims to clarify the reach of the water law in the wake of the 2006 high court ruling, *Rapanos v. United States*. In the ruling, Justice Antonin Scalia ruled in the court's plurality decision that only "relatively permanent waters" that hold a "continuous surface connection" to a traditionally navigable water of the United States can be considered jurisdictional. By contrast, Justice Anthony Kennedy ruled in a concurring opinion that waters that share a "significant nexus" to navigable waters can be regulated under the water law.

The administration's proposed rule generally seeks to follow Kennedy's approach. The proposed rule, for example, says that all streams, as well as all waters and wetlands located in floodplains and riparian corridors, share

"connectivity" or "nexus" to downstream, traditionally regulated waters -- and are therefore subject to default regulation -- while "other waters" would be assessed on a case-by-case basis.

The states' questions come as EPA is weighing whether it will approve recent changes that Michigan -- one of only two states that currently holds 404 permit authority -- proposed to its program, and a growing number of states are considering or preparing to ask federal officials for authority to issue the permits, despite limited federal funds and other hurdles.

Section 404 of the CWA, which is overseen primarily by the Corps with EPA oversight, allows regulators to permit disposal of "dredge-and-fill material," such as mining debris, earth moving material from development and infrastructure construction projects and other high-volume materials, in wetlands and other sensitive waterbodies.

Under section 404(g), the law allows states and tribes to assume permit authority if they can demonstrate their programs are equivalent.

ECOS, Association of Clean Water Administrators and Association of State Wetland Managers in an April 30 letter to Stoner outlined their concerns, saying states currently considering assumption are having difficulty making progress because of the current uncertainty" over which waters would be subject to state permit authority, and asking the agency to ensure "steps to further clarify the scope of assumable and non-assumable waters be initiated in a timely manner" (*Inside EPA*, May 9).

Stoner says in a June 13 response that EPA is committed in providing clarity and removing barriers to state assumption of 404 programs "wherever possible," adding, "I have asked my staff to identify a path forward that enables us to engage your organizations, as well as other appropriate state, federal and tribal partners and technical experts in a process that seeks to provide clarity on assumable waters under CWA section 404(g)." *The letter is available on InsideEPA.com. (Doc. ID: [2478125](#)) -- Bridget DiCosmo*

News Briefs

Stalled Nominee Slated For Key EPA Water Role

Posted: July 30, 2014

Nancy Stoner, EPA's long-time acting water chief, is departing the agency next month, leaving the office without a Senate confirmed leader though Administrator Gina McCarthy says she is planning to rely on the advice of Ken Kopocis, the administration's stalled nominee for the office, for the rest of the administration.

Stoner -- who is departing for a position at the Pisces Foundation -- has served as acting water chief for the past three years, as Kopocis' confirmation has been held up in part over GOP opposition to the agency's proposed rule seeking to clarify the scope of the Clean Water Act (CWA).

But Democrats have [also been struggling](#) to advance nominees as many of their own members -- especially vulnerable Democrats seeking re-election in GOP-leaning states -- have been unwilling to back the nominees so soon before the midterm elections in the face of Republicans' push to make any vote a referendum on agency climate, clean water and other policies, congressional and other sources say.

The situation reportedly led Kopocis, now in his third year awaiting confirmation as EPA's water chief, to consider withdrawing his nomination entirely.

But he appears to have dropped that plan as McCarthy says in a July 30 email to EPA staff, she will rely on on Kopocis as senior advisor on water issues for the last 2.5 years of the administration. "His depth of experience includes water resources development, conservation and management; water pollution control and water infrastructure; hazardous waste cleanup; transportation; and emergency and disaster response," she said.

While McCarthy does not explicitly state that Kopocis will be leading the water office, during a July 8 press call discussing the CWA jurisdiction rule she referred to Kopocis as head of the Office of Water.

In the email, McCarthy touts Stoner's work as having "greatly expanded" EPA's focus on climate resiliency, green infrastructure and information tools and technology, and highlights the CWA jurisdiction proposed rule, issued April 21, and the agency's final cooling water intake rule, released in May but which has yet to be published in the *Federal Register*.

According to a July 29 statement from Pisces Foundation director David Beckman, who, like Stoner, previously worked at the Natural Resources Defense Council, the foundation's water program works on advancing environmental literacy, forging new, integrated solutions to protecting water resources and reducing contributors to global warming, including black carbon, methane and ozone.

Stoner's work at the Pisces Foundation will focus on creating solutions to natural resource challenges and championing environmental education, McCarthy says in the email.